

Date: June 22, 2010

Item No. 13 & 14

File No. 10010

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Svetlana Ptashnaya against the Adult and Aging Services
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Completed by: Chris Rustom

Date: June 17, 2010

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



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MEMORANDUM

June 15, 2010

SVETLANA PTASHNAYA V. DEPT. OF AGING & ADULT SERVICES (10018)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Svetlana Ptashnaya alleges that the Department of Aging and Adult Services ("DAAS") failed to adequately respond to her February 11, 2010 Public Records Request to Julie Peck, Program Manager for Adult Protective Services ("APS"), for the results of their investigation into Ms. Ptashnaya's complaint against APS employee, Mr. Ogbuehi.

COMPLAINANT FILES COMPLAINT:

On May 19, 2010, Ms. Ptashnaya filed a complaint against DAAS.

JURISDICTION

DAAS is a department of the City; therefore this committee has jurisdiction to determine whether there was a violation.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.21 deals with responses to a public records request and the format of requests and of responsive documents.
- Section 67.24(c)(7) deals with public information that must be disclosed regarding an investigation of public employee misconduct.
- Section 67.26 deals with withholding of records.
- Section 67.27 deals with written justification for withholding of records.

Section 6250 et seq. of the Cal. Gov't Code

- Section 6253 deals with provision of public records and time of response.
- Section 6254(k) deals with the exemption of records from disclosure that are confidential under state or federal law.

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Sections of the Cal. Welfare & Institutions Code

- Section 10850 deals with confidentiality of records related to recipients of county welfare services.
- Section 15630 deals with reporting of elder abuse by certain government officials and confidentiality of such reports.

RELEVANT CASE LAW:

- *Jonon v. Superior Court of Kern County* (1979) 93 Cal. App. 3d 683. Defendants in a wrongful death action sought, by writ of mandate, to compel the trial court to set aside its order denying defendants' motion to compel a witness to answer deposition questions as to whether she was familiar with or was personally acquainted with the decedent or to disclose any information concerning her. The Court of Appeal granted the writ, holding that the observations of physical manifestations are not the type of information that falls within the category of information made confidential by Welf. & Inst. Code, § 10850. The court held that the Legislature intended, in the term "any confidential information," to prohibit disclosure of only such information as was otherwise made confidential by provisions of the section. The court further held that refusal to testify could not be predicated on the theory that disclosure of any information might tend to disclose the welfare status of a recipient or applicant. Observations of physical manifestations would not reveal the welfare status, and the trial court could prevent any inferences of such status from arising. The court held that the state welfare department's interpretation of the statute in its regulations was overbroad.

ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that she filed a complaint against an APS employee, Mr. Ogbuehi. She further alleges that, on February 11, 2010, she made a Public Records Request to Julie Peck, APS Program Manager, for the results of their investigation into her complaint. Ms. Ptashnaya further alleges that she has repeatedly requested the results of that investigation, but has been denied the records responsive to her request, in violation of the Ordinance.

Contested Facts: DAAS claims that the records sought by complainant are confidential under California Welfare and Institutions Code Sections 10850 and 15630, and therefore may not be disclosed.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does the complainant seek only records related to her complaint about misconduct by the APS employee, or does she also seek records related to the APS client about which she originally complained to the APS employee?

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- What type of information related to the DAAS investigation of its employee's misconduct does DAAS claim is confidential under California Welfare and Institutions Code Sections 10850 and 15630?
- Did DAAS investigate the complaint of its employee's misconduct?
- If so, did it result in records of that investigation and its conclusions?
- If so, is it possible for DAAS to provide records related to its investigation without also disclosing information that is confidential under the Welfare and Institutions Code provisions it cites?
- If so, were the allegations of misconduct found by DAAS to have any merit?
- If they were found to have merit, what is the basis for DAAS' claim that the records related to the investigation are confidential and protected from disclosure?
- What is the legal basis for complainant's allegation that the information she seeks cannot be protected from disclosure as confidential?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- If the facts alleged by complainant are true, was there a violation of the state and/or local public records law? *

SUGGESTED ANALYSIS**Under Section 67.21 of the Ordinance:**

- Determine whether the Department timely responded to the request.

Under Section 24(c)(7) of the Ordinance:

- Determine whether the results of a departmental investigation into public employee misconduct must be released under this section.

Under Section 67.26 of the Ordinance:

- Determine whether the Department withheld records and if so, whether the withholding complies with the requirement to keep withholding to a minimum.

Under Section 67.27 of the Ordinance:

- Determine whether the Department's asserted justifications, if any, for any responsive documents violate this provision requiring a written justification for withholding.

Under Section 6254(k) of the Cal. Gov't Code:

- Determine whether the asserted confidentiality of the information sought by complainant is confidential and thus protected from disclosure under this section and Welfare and Institutions Code §§ 10850 and 15630.

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CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
- 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
- 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
- 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property

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without due process of law, or denied equal protection of the laws, as provided by Section 7.

5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

**ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN
 FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE)
 UNLESS OTHERWISE SPECIFIED**

**SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS;
 ADMINISTRATIVE APPEALS.**

(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(l) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

SEC . 67.24. PUBLIC INFORMATION THAT MUST BEDISCLOSED

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(c) Personnel Information. *None of the following shall be exempt from disclosure* under Government Code Section 6254, subdivision (c), or any other provision of California Law *where disclosure is not forbidden*:

(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.

SEC. 67.26. WITHHOLDING KEPT TO A MINIMUM.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request.

SEC. 67.27. JUSTIFICATION OF WITHHOLDING.

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) *A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.*

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

CAL. PUBLIC RECORDS ACT (GOVT. CODE §§ 6250, ET SEQ.)**SECTION 6253**

(a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. *Any reasonably segregable portion of a record shall be available for inspection* by any person requesting the record after deletion of the portions that are exempted by law.

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(b) *Except with respect to public records exempt from disclosure by express provisions of law*, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

- (1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.
- (2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.
- (3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.
- (4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

SECTION 6254

Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(k) *Records, the disclosure of which is exempted or prohibited pursuant to federal or state law*, including, but not limited to, provisions of the Evidence Code relating to privilege.

CAL. WELFARE & INSTITUTIONS CODE

SECTION 10850

(a) Except as otherwise provided in this section, *all applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to any form of public social services for which grants-in-aid are received by this state from the United States government shall be confidential, and shall not be open to examination for any purpose not directly connected with the*

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administration of that program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any such program. The disclosure of any information that identifies by name or address any applicant for or recipient of these grants-in-aid to any committee or legislative body is prohibited, except as provided in subdivision (b).

(b) Except as otherwise provided in this section, no person shall publish or disclose or permit or cause to be published or disclosed any list of persons receiving public social services. Any county welfare department in this state may release lists of applicants for, or recipients of, public social services, to any other county welfare department or the State Department of Social Services, and these lists or any other records shall be released when requested by any county welfare department or the State Department of Social Services. These lists or other records shall only be used for purposes directly connected with the administration of public social services. Except for those purposes, no person shall publish, disclose, or use or permit or cause to be published, disclosed, or used any confidential information pertaining to an applicant or recipient.

Any county welfare department and the State Department of Social Services shall provide any governmental entity that is authorized by law to conduct an audit or similar activity in connection with the administration of public social services, including any committee or legislative body so authorized, with access to any public social service applications and records described in subdivision (a) to the extent of the authorization. Those committees, legislative bodies and other entities may only request or use these records for the purpose of investigating the administration of public social services, and shall not disclose the identity of any applicant or recipient except in the case of a criminal or civil proceeding conducted in connection with the administration of public social services.

However, this section shall not prohibit the furnishing of this information to other public agencies to the extent required for verifying eligibility or for other purposes directly connected with the administration of public social services, or to county superintendents of schools or superintendents of school districts only as necessary for the administration of federally assisted programs providing assistance in cash or in-kind or services directly to individuals on the basis of need. Any person knowingly and intentionally violating this subdivision is guilty of a misdemeanor.

Further, in the context of a petition for the appointment of a conservator for a person who is receiving or has received aid from a public agency, as indicated above, or in the context of a criminal prosecution for a violation of Section 368 of the Penal Code both of the following shall apply:

(1) An Adult Protective Services employee or Ombudsman may answer truthfully at any proceeding related to the petition or prosecution, when asked if he or she is aware of information that he or she believes is related to the legal mental capacity of that aid recipient or the need for a conservatorship for that aid recipient. If the Adult Protective Services employee or Ombudsman

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states that he or she is aware of such information, the court may order the Adult Protective Services employee or Ombudsman to testify about his or her observations and to disclose all relevant agency records.

(2) The court may order the Adult Protective Services employee or Ombudsman to testify about his or her observations and to disclose any relevant agency records if the court has other independent reason to believe that the Adult Protective Services employee or Ombudsman has information that would facilitate the resolution of the matter.

(c) The State Department of Social Services may make rules and regulations governing the custody, use, and preservation of all records, papers, files, and communications pertaining to the administration of the laws relating to public social services under their jurisdiction. The rules and regulations shall be binding on all departments, officials and employees of the state, or of any political subdivision of the state and may provide for giving information to or exchanging information with agencies, public or political subdivisions of the state, and may provide for giving information to or exchanging information with agencies, public or private, that are engaged in planning, providing, or securing social services for or in behalf of recipients or applicants; and for making case records available for research purposes, provided that making these case records available *will not result in the disclosure of the identity of applicants for or recipients of public social services* and will not disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains, unless the department has complied with subdivision (t) of Section 1798.24 of the Civil Code.

(d) Any person, including every public officer and employee, who knowingly secures or possesses, other than in the course of official duty, an official list or a list compiled from official sources, published or disclosed in violation of this section, of persons who have applied for or who have been granted any form of public social services for which state or federal funds are made available to the counties is guilty of a misdemeanor.

(e) This section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act committed in a welfare department office, a criminal act against any county or state welfare worker, or any criminal act witnessed by any county or state welfare worker while involved in the administration of public social services at any location. Further, this section shall not be construed to prohibit an employee of a county welfare department from disclosing confidential information concerning a public social services applicant or recipient to a state or local law enforcement agency investigating or gathering information regarding a criminal act intentionally committed by the applicant or recipient against any off-duty county or state welfare worker in retaliation for an act performed in the course of the welfare worker's duty when the person committing the offense knows or reasonably should know that the victim is a state or county welfare worker. These criminal acts shall include only those that are in violation

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of state or local law. Disclosure of confidential information pursuant to this subdivision shall be limited to the applicant's or recipient's name, physical description, and address.

(f) The provisions of this section shall be operative only to the extent permitted by federal law and shall not apply to, but exclude, Chapter 7 (commencing with Section 14000) of this division, entitled "Basic Health Care", and for which a grant-in-aid is received by the state under Title XIX of the Social Security Act.

(Amended Sec. 3, Ch. 241, Stats. 2005. Effective January 1, 2006.)

SECTION 15630

(a) Any person who has assumed full or intermittent responsibility for the care or custody of an elder or dependent adult, whether or not he or she receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, clergy member, or employee of a county adult protective services agency or a local law enforcement agency, is a mandated reporter.

(b)(1) Any mandated reporter who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior, including an act or omission, constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the known or suspected instance of abuse by telephone immediately or as soon as practicably possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsperson or the local law enforcement agency.

The local ombudsperson and the local law enforcement agency shall, as soon as practicable, except in the case of an emergency or pursuant to a report required to be made pursuant to clause (v), in which case these actions shall be taken immediately, do all of the following:

(i) Report to the State Department of Public Health any case of known or suspected abuse occurring in a long-term health care facility, as defined in subdivision (a) of Section 1418 of the Health and Safety Code.

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(ii) Report to the State Department of Social Services any case of known or suspected abuse occurring in a residential care facility for the elderly, as defined in Section 1569.2 of the Health and Safety Code, or in an adult day care facility, as defined in paragraph (2) of subdivision (a) of Section 1502.

(iii) Report to the State Department of Public Health and the California Department of Aging any case of known or suspected abuse occurring in an adult day health care center, as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

(iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse any case of known or suspected criminal activity.

(v) Report all cases of known or suspected physical abuse and financial abuse to the local district attorney's office in the county where the abuse occurred.

(B) If the suspected or alleged abuse occurred in a state mental hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services, or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2)(A) A mandated reporter who is a clergy member who acquires knowledge or reasonable suspicion of elder or dependent adult abuse during a penitential communication is not subject to paragraph (1). For purposes of this subdivision, "penitential communication" means a communication that is intended to be in confidence, including, but not limited to, a sacramental confession made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization is authorized or accustomed to hear those communications and under the discipline tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(B) Nothing in this subdivision shall be construed to modify or limit a clergy member's duty to report known or suspected elder and dependent adult abuse when he or she is acting in the capacity of a care custodian, health practitioner, or employee of an adult protective services agency.

(C) Notwithstanding any other provision in this section, a clergy member who is not regularly employed on either a full-time or part-time basis in a long-term care facility or does not have

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care or custody of an elder or dependent adult shall not be responsible for reporting abuse or neglect that is not reasonably observable or discernible to a reasonably prudent person having no specialized training or experience in elder or dependent care.

(3)(A) A mandated reporter who is a physician and surgeon, a registered nurse, or a psychotherapist, as defined in Section 1010 of the Evidence Code, shall not be required to report, pursuant to paragraph (1), an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness or dementia, or is the subject of a court-ordered conservatorship because of a mental illness or dementia.

(iv) In the exercise of clinical judgment, the physician and surgeon, the registered nurse, or the psychotherapist, as defined in Section 1010 of the Evidence Code, reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(4)(A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Public Health determines, upon approval by the Bureau of Medi-Cal

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Fraud and Elder Abuse and the state long-term care ombudsperson, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c)(1) Any mandated reporter who has knowledge, or reasonably suspects, that types of elder or dependent adult abuse for which reports are not mandated have been inflicted upon an elder or dependent adult, or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsperson program. Except in an emergency, the local ombudsperson shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services or to a local law enforcement agency or to the local ombudsperson. Except in an emergency, the local ombudsperson and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include, if known, the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other adult responsible for the elder's or dependent adult's care, the nature and extent of the elder's or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, as requested by the agency receiving the report.

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(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g)(1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide to that law enforcement agency a copy of its investigative report concerning the reported matter.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in the county jail; by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 of the Welfare and Institutions Code discovers the offense.

(i) For purposes of this section, "dependent adult" shall have the same meaning as in Section 15610.23.



DENNIS J. HERRERA
City Attorney

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914
E-MAIL: jerry.threet@sfgov.org

June 7, 2010

Nick Goldman, Chair
Members of the Complaint Committee

Re: Svetlana Ptashnaya v. Department of Aging & Adult Services (10018)

Dear Chair Goldman and Members of the Complaint Committee:

This letter addresses the issue of whether the Sunshine Ordinance Task Force ("Task Force") has jurisdiction over the complaint of Svetlana Ptashnaya against the Department of Aging & Adult Services ("AAS").

BACKGROUND

Complainant Svetlana Ptashnaya alleges that AAS failed to adequately respond to her Public Records Request. AAS claims that the information sought by complainant is confidential under state law and therefore may not be disclosed.

COMPLAINT

On May 16, 2010, Ms. Ptashnaya filed a complaint with the Task Force alleging a violation.

SHORT ANSWER

Based on Complainant's allegation, it would appear that the Sunshine Ordinance Task Force *does* have subject matter jurisdiction over the allegations, which if true, could constitute a violation of state or local public meetings laws.

DISCUSSION AND ANALYSIS

AAS is a department under the Sunshine Ordinance. The Task Force therefore appears to have jurisdiction to hear a public records complaint.



<complaints@sfgov.org>

05/18/2010 10:43 AM

To <sotf@sfgov.org>

cc

bcc

Subject Sunshine Complaint

To:sotf@sfgov.orgEmail:complaints@sfgov.orgDEPARTMENT:Aging and Adult Services
CONTACTED:Cindy Rasmussen
PUBLIC_RECORDS_VIOLATION:Yes
PUBLIC_MEETING_VIOLATION:No
MEETING_DATE:
SECTIONS_VIOLATED:
DESCRIPTION:Wants results of investigation related to complaint filed against Adult Protective
Services employee Ethelbert Ogbuehi.
HEARING:Yes
PRE-HEARING:Yes
DATE:May 18, 2010
NAME:Svetlana Ptashnaya
ADDRESS:125 Palm Ave., #101
CITY:San Francisco
ZIP:CA 94118
PHONE:
CONTACT_EMAIL:sptashnaya@yahoo.com
ANONYMOUS:
CONFIDENTIALITY_REQUESTED:No



Svetlana Ptashnaya
<sptashnaya@yahoo.com>
05/16/2010 10:45 PM

To sotf@sfgov.org
cc
bcc
Subject Sunshine Ordinance violation

Svetlana Ptashnaya
125 Palm Ave. #101
San
Francisco, CA 94118
phone:
415-637-1744

sptashnaya@yahoo.com

May 17, 2010

Adele Destro
Interim Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco CA 94102-4689

Dear Ms. Destro:

Please find the attachments:

1. My complaint regarding unlawful actions and misconduct performed by Adult Protective Services (APS) employee social worker Mr. Ogbuehi sent to APS Program Manager Ms. Peck on 02/11/10.
2. Response I received from APS Supervisor Ms. Rasmussen on 03/05/10 with refusal to "divulge confidential information" including investigation results.
3. My first request to Human Services Agency Executive Director Mr. Throrer regarding violation of my rights under the Sunshine Ordinance sent on 03/15/10 by mail.
4. My first request to Human Services Agency Executive Director Mr. Throrer regarding violation of my rights under the Sunshine Ordinance repeated on 03/31/10 by email and his response.
5. My last request to Human Services Agency Executive Director Mr. Throrer regarding violation of my rights under the Sunshine Ordinance sent on 05/01/10 and his response. Hitherto on 05/17/10 I don't have any information whether facts I mentioned in my complaint were confirmed and whether actions were taken accordingly. Please help to deal with this unlawful outrage.

Sincerely,
Svetlana Ptashnaya



1. APS-Svetlana Ptashnaya complaint.doc 2. APS-answer-Svetlana Ptashnaya complaint.doc



3. HSA-Svetlana Ptashnaya complaint.doc 4. HSA-Svetlana Ptashnaya complaint.doc 5. HSA-Svetlana Ptashnaya complaint.doc

Svetlana Ptashnaya
125 Palm Ave. #101
San Francisco, CA 94118
phone: 415-637-1744
sptashnaya@yahoo.com
February 11, 2010

Julie Peck
Program Manager
Adult Protective Services (APS)
1650 Mission Street
San Francisco CA 94103

Dear Ms. Peck:

This letter is complaint about unlawful actions and misconduct performed by your employee social worker Mr. Ogbuehi.

On 02/09/10 at 2:10 pm Mr. Ogbuehi came at my apartment in response to my 4th request to clarify situation connected with person he responsible for which lives at same building at apartment straight above mine. Mr. Ogbuehi contacted me in the first place regarding this matter on 01/12/10. During that first conversation we agreed that I will send him all documents pertain to the problem and I requested to provide investigation and give me his official conclusion. I sent him all documents and 3 letters with no answer. After my 4th request Mr. Ogbuehi called and proposed to meet him in café. I explained that had no intent to meet in café and could meet him only in his office or in the building where person he responsible for or someone related to her constantly performs hooligan outrage. He refused to meet in the office and said he will come to my apartment with purpose to define steps to resolve the situation.

After first several minutes when I reminded that he must give me written conclusion about situation with person he responsible for he made the statement that owner of the building (to whom I sent 15 complaints regarding same matter and whose negligence I reported to SF Department of Building Inspection) with her contractor are not pleased with me.

Mr. Ogbuehi next statement started: "If you" which he was not able to finish because I said that our meeting at my apartment finished and he must leave. Surprisingly he didn't leave even chair insisting to stay. I explained that I'll call the police and opened the apartment door waiting him to leave. Your employee Mr. Ogbuehi continued to stay at my apartment saying: "If you touch me you will go in jail" trying to make contact with my hands. Not being successful he finally left.

Please let me know result of your investigation as Government Program Manager as soon as possible.

Sincerely,
Svetlana Ptashnaya

Re: Complaint

...

Fri, March 5, 2010 10:55:53 AM

Cindy Rasmussen

From: <Cindy.Rasmussen@sfgov.org>

...

Add to Contacts

To: sptashnaya@yahoo.com

Cc: julie.peck@sfgov.org

Dear Ms. Ptashnaya,

I have received the letter you sent to Ms. Julie Peck, dated February 11, 2010 regarding your complaint about the APS worker, Ethelbert Ogbuehi.

I have interviewed Mr. Ogbuehi, and have thoroughly reviewed the details of his visit with you, and the concerns you have expressed. I have also read the several emails and letters you have sent regarding your complaints against your neighbor.

As you may know, all specific details of any Adult Protective Services case and related actions are kept strictly confidential, and while I cannot divulge confidential information, I can assure you that this matter has now been fully investigated within our program.

I appreciate you taking the time to write Adult Protective Services, and I can assure you that we are taking appropriate steps to ensure that all APS services and actions are within the scope of our role, and benefit the clients we serve in the community, to the best of our ability.

Sincerely,

Cindy E. Rasmussen, MSW, LCSW
Dept. of Aging and Adult Services
Supervisor, Adult Protective Services
1650 Mission Street, 4th Floor
San Francisco, CA 94120
Phone 415-355-6703
FAX 415-355-3549

Email: Cindy.Rasmussen@sfgov.org

Svetlana Ptashnaya
125 Palm Ave. #101
San Francisco, CA 94118
phone: 415-637-1744
sptashnaya@yahoo.com
March 15, 2010

Executive Director
Human Services Agency
P.O. Box 7988
San Francisco, CA 94120-7988

To whom it may concern:

The attached are copies of my complaint addressed to Adult Protective Services (APS) Program Manager Ms. Peck and answer from APS Supervisor Ms. Rasmussen.

As you can see from my complaint I confronted the attempt of open harassment made by APS employee Mr. Ogbuehi when he performed his duties as part of Government Program.

I believe that no level of confidentiality can prevent me from knowing whether facts I mentioned in complaint were confirmed and whether actions were taken accordingly.

Please let me know all findings connected with me personally that were defined as result of APS investigation.

Sincerely,

Svetlana Ptashnaya

Re: Outrage

From: Trent Rhorer <Trent.Rhorer@sfgov.org>...

To: sptashnaya@yahoo.com

3 Files Download All

Svetlana Ptashnaya complaint.doc (39KB); APS-Svetlana Ptashnaya complaint.doc (41KB); APS-answer-Svetlana Ptashnaya complaint.doc (44KB)

Thank you for your correspondence. I have forwarded your complaint to the director of the Department of Aging and Adult Services for further follow up.

- Trent

Svetlana Ptashnaya <sptashnaya@yahoo.com>

03/31/2010 10:30 PM

To Trent Rhorer <Trent.Rhorer@sfgov.org>

cc

Subject Re: Outrage

Dear Mr. Rhorer,

Attached are copies of all documents sent to HSA by mail on 03/15/10 regarding unlawful actions and misconduct performed by APS employee social worker Mr. Ogbuehi.

Thank you. Sincerely,

Svetlana Ptashnaya

From: Trent Rhorer <Trent.Rhorer@sfgov.org>

To: sptashnaya@yahoo.com

Sent: Wed, March 31, 2010 4:31:00 PM

Subject: Re: Outrage

Ms. Ptashnaya,

There is no complaint attached so I am unable to respond.

Thanks.

- Trent Rhorer

Svetlana Ptashnaya <sptashnaya@yahoo.com>

03/28/2010 09:51 PM

To Trent.Rhorer@sfgov.org

cc

Subject Outrage

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Sincerely,

Svetlana Ptashnaya

Re: Outrage
From: Trent Rhorer <Trent.Rhorer@sfgov.org>
To: Svetlana Ptashnaya <sptashnaya@yahoo.com>
Cc: Anne Hinton <Anne.Hinton@sfgov.org>

Ms. Hinton will send you a response. Thanks.

From: Svetlana Ptashnaya [sptashnaya@yahoo.com]
Sent: 05/01/2010 02:16 PM MST
To: Trent Rhorer
Cc: Anne Hinton
Subject: Re: Outrage

Dear Mr. Rhorer,

San Francisco Human Services Commission states that according to Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) "Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review."

I sent my complaint regarding unlawful actions and misconduct performed by APS employee social worker Mr. Ogbuehi to Adult Protective Services Program Manager Ms. Peck on 02/11/10. You forwarded my complaint to the director of the Department of Aging and Adult Services Ms. Hinton for further follow up on 04/01/10.

Hitherto on 05/01/10 I don't have any information whether facts I mentioned in my complaint were confirmed and whether actions were taken accordingly.

Please let me know approved time limit for this type of investigation.

Sincerely,
Svetlana Ptashnaya



Svetlana Ptashnaya
<sptashnaya@yahoo.com>
05/16/2010 10:45 PM

To sotf@sfgov.org
cc
bcc
Subject Sunshine Ordinance violation

Svetlana Ptashnaya
125 Palm Ave. #101
San
Francisco, CA 94118
phone:
415-637-1744

sptashnaya@yahoo.com

May 17, 2010

Adele Destro
Interim Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco CA 94102-4689

Dear Ms. Destro:

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3. HSA-Svetlana Ptashnaya complaint.doc 4. HSA-Svetlana Ptashnaya complaint.doc 5. HSA-Svetlana Ptashnaya complaint.doc

Svetlana Ptashnaya
125 Palm Ave. #101
San Francisco, CA 94118
phone: 415-637-1744
sptashnaya@yahoo.com
May 21, 2010

Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco CA 94102-4689

Dear Mr. Rustom:

The attached is response from Department of Aging and Adult Services Executive Director Ms. Hinton that I received on 05/19/10 – after I sent documents to Sunshine Ordinance Task Force. As you can see from Ms. Hinton letter investigation at Government Agency regarding my complaint took place but my request to get information from conclusive documents was rejected – open violation of my rights under the Sunshine Ordinance. I believe that no level of confidentiality can prevent me from knowing whether facts I mentioned in complaint were confirmed and whether actions were taken accordingly. Please help to protect my rights.

Sincerely,
Svetlana Ptashnaya 



May 4, 2010

Dear Ms. Ptashnaya:

I have received your letter of complaint addressed to Trent Rhorer, Director of the Human Services Agency regarding your concerns about an APS worker in the Department of Aging and Adult Services.

Per your previous request, this matter was thoroughly investigated by our Adult Protective Services Program in March of this year. You were sent a letter from Adult Protective Services Supervisor Ms. Cindy Rasmussen dated March 5, 2010, explaining that this issue was fully investigated then and is now considered closed. As you know, all information related to an Adult Protective Services case is highly confidential. Per State of California regulations, strict laws prevent disclosure of any aspect of the case.

Please be advised that the Department now considers this issue closed.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Anne Hinton".

E. Anne Hinton
Executive Director

cc: Trent Rhorer, HSA

Svetlana Ptashnaya
125 Palm Ave. #101
San Francisco, CA 94118
phone: 415-637-1744
sptashnaya@yahoo.com
February 11, 2010

Julie Peck
Program Manager
Adult Protective Services (APS)
1650 Mission Street
San Francisco CA 94103

Dear Ms. Peck:

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Please let me know result of your investigation as Government Program Manager as soon as possible.

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Svetlana Ptashnaya

Re: Complaint

...

Fri, March 5, 2010 10:55:53 AM

From: Cindy Rasmussen <Cindy.Rasmussen@sfgov.org>

...

Add to Contacts

To: sptashmaya@yahoo.com

Cc: julie.peck@sfgov.org

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I appreciate you taking the time to write Adult Protective Services, and I can assure you that we are taking appropriate steps to ensure that all APS services and actions are within the scope of our role, and benefit the clients we serve in the community, to the best of our ability.

Sincerely,

Cindy E. Rasmussen, MSW, LCSW
Dept. of Aging and Adult Services
Supervisor, Adult Protective Services
1650 Mission Street, 4th Floor
San Francisco, CA 94120
Phone 415-355-6703

FAX 415-355-3549

Email: Cindy.Rasmussen@sfgov.org

Svetlana Ptashnaya
125 Palm Ave. #101
San Francisco, CA 94118
phone: 415-637-1744
sptashnaya@yahoo.com
March 15, 2010

Executive Director
Human Services Agency
P.O. Box 7988
San Francisco, CA 94120-7988

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Svetlana Ptashnaya complaint.doc (39KB); APS-Svetlana Ptashnaya complaint.doc (41KB);
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- Trent

Svetlana Ptashnaya <sptashnaya@yahoo.com>
03/31/2010 10:30 PM

Trent Rhorer <Trent.Rhorer@sfgov.org>

To

cc

Subject

Re: Outrage

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Ms. Ptashnaya,

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Thanks.
- Trent Rhorer

Svetlana Ptashnaya <sptashnaya@yahoo.com>

03/28/2010 09:51 PM

Trent.Rhorer@sfgov.org

To

cc

Subject

Outrage

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Cc: Anne Hinton <Anne.Hinton@sfgov.org>

Ms. Hinton will send you a response. Thanks.

From: Svetlana Ptashnaya [sptashnaya@yahoo.com]
Sent: 05/01/2010 02:16 PM MST
To: Trent Rhorer
Cc: Anne Hinton
Subject: Re: Outrage

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From: Trent Rhorer <Trent.Rhorer@sfgov.org>
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Sincerely,
Svetlana Ptashnaya

City and County of San Francisco



Gavin Newsom, Mayor

Human Services Agency

Department of Human Services
Department of Aging and Adult Services

Trent Rhorer, Executive Director

June 7, 2010

Mr. Chris Rustom
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689

Re: Sunshine Ordinance Complaint #10018

Dear Mr. Rustom:

The Department of Aging and Adult Services is responding in writing to Sunshine Ordinance Complaint #10018. A representative of the Department of Aging and Adult Services will not be attending the meeting on June 8, 2010.

The Sunshine Ordinance Task Force does not have jurisdiction over this matter. The requested records or documents are not public records. The requested information is statutorily protected under the Welfare and Institutions Code, Sections 15630 and 10850.

I am attaching correspondence, dated 2/26/10 and 3/05/10, sent to Miss Svetlana Ptashnaya.

Sincerely,

Shireen McSpadden, Deputy Director
Department of Aging and Adult Services

Attachments

Julie Peck/DHS/CCSF
02/26/2010 05:06 PM

To Svetlana Ptashnaya <sptashnaya@yahoo.com>@SFGOV
cc Cindy Rasmussen/DHS/CCSF@CCSF
bcc
Subject Re: complaint

Hello Miss Ptashnaya. Adult Protective Services takes both written and verbal complaints about our services very seriously. You will be contacted next week by Cindy Rasmussen so that she can get further information directly from you about the issues you outlined in your letter. However, due to confidentiality laws, you will not be apprised of investigation findings.

Julie Peck, LCSW, Manager
Adult Protective Services

Dept. of Aging and Adult Services
1650 Mission St., 4th Floor
San Francisco, CA 94103
Phone: (415) 355-6710
FAX: (415) 557-6713
E-Mail: Julie.Peck@sfgov.org

CONFIDENTIALITY NOTICE: This document is intended for the use of the party to whom it is addressed and may contain information that is privileged, confidential, and protected from disclosure under applicable law. If you are not the addressee, or a person authorized to accept documents on behalf of the addressee, you are hereby notified that any review, disclosure, dissemination, copying, or other action based on the content of this communication is not authorized. If you have received this document in error, please contact the sender immediately by reply voicemail and delete or shred all copies of the original e-mail.

Svetlana Ptashnaya <sptashnaya@yahoo.com>



Svetlana Ptashnaya
<sptashnaya@yahoo.com>
02/26/2010 03:28 PM

To Julie Peck <Julie.Peck@sfgov.org>
cc
Subject Re: complaint

Hi Peck

Thank you

I'll wait for result of Mr. Ogbuchi's unlawful action and misconduct investigation

Svetlana Ptashnaya

From: Julie Peck <Julie.Peck@sfgov.org>
To: sptashnaya@yahoo.com
Sent: Fri, February 26, 2010 12:52:33 PM
Subject: Re: complaint

Hello Miss Ptashnaya. I received your letter outlining your issues and, in addition, the e-mail copy below. Mr. Ogbuehi's supervisor, Cindy Rasmussen, was on a medical leave at the time your letter was received. I have asked Cindy Rasmussen to review your letter. She returned to work this past Monday and is out today. As I was out of state this week and back in the office today, I have not had the opportunity to discuss with Cindy Rasmussen your letter of complaint. I appreciate you taking the time to put in writing your issues with Mr. Ogbuehi. Thank you.

Julie Peck, LCSW, Manager
Adult Protective Services

Dept. of Aging and Adult Services
1650 Mission St., 4th Floor
San Francisco, CA 94103
Phone: (415) 355-6710
FAX: (415) 557-6713
E-Mail: Julie.Peck@sfgov.org

CONFIDENTIALITY NOTICE: This document is intended for the use of the party to whom it is addressed and may contain information that is privileged, confidential, and protected from disclosure under applicable law. If you are not the addressee, or a person authorized to accept documents on behalf of the addressee, you are hereby notified that any review, disclosure, dissemination, copying, or other action based on the content of this communication is not authorized. If you have received this document in error, please contact the sender immediately by reply voicemail and delete or shred all copies of the original e-mail.

Svetlana Ptashnaya <sptashnaya@yahoo.com>

02/23/2010 09:18 PM

To: julie.peck@sfgov.org
cc
Subject: complaint

Dear Ms. Peck

Re: Complaint

...

Fri, March 5, 2010 10:55:53 AM

Cindy Rasmussen

From: <Cindy.Rasmussen@sfgov.org>

...

Add to Contacts

To: sptashnaya@yahoo.com

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Dept. of Aging and Adult Services
Supervisor, Adult Protective Services
1650 Mission Street, 4th Floor
San Francisco, CA 94120
Phone 415-355-6703
FAX 415-355-3549

Email: Cindy.Rasmussen@sfgov.org